

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
2000 Biennial Regulatory Review --	)	CC Docket No. 00-199
Comprehensive Review of the	)	
Accounting Requirements and	)	
ARMIS Reporting Requirements for	)	
Incumbent Local Exchange Carriers:	)	
Phase 2	)	
	)	
Amendments to the Uniform System	)	CC Docket No. 97-212
of Accounts for Interconnection	)	
	)	
Jurisdictional Separations Reform and	)	CC Docket No. 80-286
Referral to the Federal-State Joint Board	)	

**SBC COMMUNICATIONS INC. PETITION FOR RECONSIDERATION**

In addition to the petition for reconsideration (PFR) it filed collectively with BellSouth and Verizon, SBC Communications Inc. ("SBC") respectfully submits this petition for reconsideration of a separate discrete issue regarding the Commission's amendment of rule 32.11. The Commission adopted an amendment to rule 32.11 in an attempt to ensure that its accounting and reporting rules specifically apply to dominant incumbent local exchange carriers (ILECs).

In the *Phase 2 Order* in this proceeding, the Commission concluded that section 32.11 of its rules should be amended to specifically apply to incumbent local exchange carriers. In reaching this conclusion, the Commission stated that its accounting rules are applied only to ILECs because these carriers are dominant in their markets.<sup>1</sup> However, the Commission, upon adopting the amendment, relied on the statutory definition of "incumbent local exchange carrier" in 251(h) of the Communications Act. Based on the Commission's theory that the accounting

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<sup>1</sup> *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, et al.*, CC Docket 00-199, et al., 16 FCC Rcd 19911, ¶126 (2001) (*Phase 2 Order*).

requirements should be applied only to carriers that are dominant in their markets,<sup>2</sup> the Commission's incorporation by reference of the section 251(h) definition of "incumbent local exchange carrier" into Rule 32.11 in an effort to clarify which entities are bound by the regulatory accounting rules is misplaced. The 251(h) definition of ILEC is not appropriate in the context of determining which entities are subject to the Commission's accounting regulation.

Section 251(h) defines the term "incumbent local exchange carrier" for purposes of section 251, and thus for purposes of identifying which carriers are subject to the market opening requirements of section 251(c). In particular, it defines the term "incumbent local exchange carrier" as, "with respect to an area, the local exchange carrier that on the date of enactment of the Telecommunications Act of 1996, provided telephone exchange service in such area; and on such date of enactment was deemed to be a member of the exchange carrier association pursuant to section 69.601(b);" or "is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in [251(h)(B)] clause (i) ."<sup>3</sup> The fact that a carrier meets the foregoing definition says nothing about whether that carrier is "dominant" in the markets in which it operates.

Under the Commission's rules, a carrier is "dominant" if it has market power, that is, the ability to restrict output and thus raise prices in a relevant market.<sup>4</sup> The fact that a carrier meets the statutory definition of an incumbent local exchange carrier under section 251(h) does not mean that it is "dominant" in the markets in which it operates. For example, in the *Non-Accounting Safeguards Order*, the Commission held that a BOC could not avoid its network unbundling obligations by transferring a network element to a section 272 affiliate. Rather the section 272 affiliate would, for purposes of that element, be deemed an ILEC under section 251(h) as a successor or assign of the BOC, and thus be subject to the unbundling requirements

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<sup>2</sup>*Id.*

<sup>3</sup> 47 C.F.R. § 251(h)(1).

<sup>4</sup> 47 C.F.R. § 61.3(q).

of 251(c)(3), irrespective of whether the affiliate was dominant in the market for interexchange services.<sup>5</sup> Likewise, in the *Ascent* decision, the court held that SBC's advanced services affiliates are subject to the network unbundling and resale requirements of sections 251 (c)(3) and (4),<sup>6</sup> and thus, by definition, are ILECs under section 251(h). However, as SBC has shown in its Non-Dominance Petition<sup>7</sup> and its comments filed in the Commission's *Incumbent LEC Broadband Notice* proceeding,<sup>8</sup> SBC's advanced services affiliates are nondominant in the market for broadband services. The Commission's decision to apply its accounting rules to ILECs as defined in Section 251(h) thus is overly broad and disconnected from the Commission's stated goal of applying the accounting rules only to dominant carriers.

The Commission should reconsider section 32.11, as amended, and further amend it to ensure that the rule does not sweep in carriers that are not dominant in the markets in which they operate. In particular, the Commission should clarify that the accounting rules apply only to ILECs as defined in sections 251(h)(1)(A) or 251(h)(1)(B)(i). The Commission should decide on a case-by-case basis whether any other entity that is a successor or assign of an ILEC under 252(h)(1)(B)(ii), or that might be treated as an ILEC for purposes of section 251(c) under 251(h)(2) (i.e., as a comparable carrier) should be subject to the Commission's accounting rules.

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<sup>5</sup> See, *In the Matter of Implementation of Non-Accounting Safeguards Section of Section 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149; First Report and Order and Further Notice of Proposed Rulemaking, ¶¶158 – 170 (*Non-Accounting Safeguards Order*).

<sup>6</sup> *Association of Communications Enterprises v. FCC*, No. 99-1441 (D.C. Circuit, Jan. 9, 2001) (*Ascent*).

<sup>7</sup> See *SBC Petition for Expedited Ruling That it is Non-Dominant in its Provision of Advanced Services and for Forbearance From Dominant Carrier Regulation of These Services*, filed on October 3, 2001 (*Non-Dominance Petition*).

<sup>8</sup> See SBC Comments filed in *Review of Regulatory Requirements for Incumbent LEC Broadband Services: SBC Petition for Expedited Ruling That it is Non-Dominant in its provision of Advanced Services and For Forbearance From Dominant Carrier Regulation of These*

Respectfully submitted,

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